

BEFORE THE  
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ERNESTO GABRIEL MARTINEZ, JR.

Occupational Therapist License No. OT 4089

Respondent.

Case No. OT2004-35

OAH No. L-2007050720

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Occupational Therapy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 14, 2008.

It is so ORDERED February 13, 2008.

*Mary McVeet, MHA*  
FOR THE BOARD OF OCCUPATIONAL THERAPY  
DEPARTMENT OF CONSUMER AFFAIRS  
*Board President*

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GLORIA A. BARRIOS  
Deputy Attorney General  
3 KEVIN W. BUSH, State Bar No. 210322  
Deputy Attorney General  
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6

7 Attorneys for Complainant

8 **BEFORE THE**  
**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 ERNESTO GABRIEL MARTINEZ, JR  
12 3019 Grand Avenue  
13 Walnut Park, CA 90255

14 Occupational Therapist License No. OT 4089

15 Respondent.

Case No. OT2004-35

OAH No. L-2007050720

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
17 above-entitled proceedings that the following matters are true:

18 PARTIES

19 1. Heather Martin (Complainant) is the Executive Officer of the Board of  
20 Occupational Therapy. She brought this action solely in her official capacity and is represented  
21 in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Kevin W.  
22 Bush, Deputy Attorney General.

23 2. Respondent Ernesto Gabriel Martinez, Jr. (Respondent) is represented in  
24 this proceeding by attorney Lawrence Trygstad, whose address is 1880 Century Park East, Suite  
25 1104, Los Angeles, CA 90067.

26 3. On or about December 10, 2002, the Board of Occupational Therapy  
27 issued Occupational Therapist License No. OT 4089 to Respondent. The license was in full  
28 force and effect at all times relevant to the charges brought in Accusation No. OT2004-35 and

1 will expire on December 31, 2008, unless renewed.

2 JURISDICTION

3 4. Accusation No. OT2004-35 was filed before the Board, and is currently  
4 pending against Respondent. The Accusation and all other statutorily required documents were  
5 properly served on Respondent on December 15, 2006. Respondent timely filed his Notice of  
6 Defense contesting the Accusation. A copy of Accusation No. OT2004-35 is attached as exhibit  
7 A and incorporated herein by reference.

8 ADVISEMENT AND WAIVERS

9 5. Respondent has carefully read, fully discussed with counsel, and  
10 understands the charges and allegations in Accusation No. OT2004-35. Respondent has also  
11 carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
12 Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the  
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
15 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
16 the right to present evidence and to testify on his own behalf; the right to the issuance of  
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
18 reconsideration and court review of an adverse decision; and all other rights accorded by the  
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up  
21 each and every right set forth above.

22 CULPABILITY

23 8. Respondent understands and agrees that the charges and allegations in  
24 Accusation No. OT2004-35, if proven at a hearing, constitute cause for imposing discipline  
25 upon his Occupational Therapist License.

26 9. For the purpose of resolving the Accusation without the expense and  
27 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could  
28 establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up

1 his right to contest those charges.

2 10. Respondent agrees that his Occupational Therapist License is subject to  
3 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the  
4 Disciplinary Order below.

5 CONTINGENCY

6 11. The parties understand and agree that facsimile copies of this Stipulated  
7 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
8 force and effect as the originals.

9 12. In consideration of the foregoing admissions and stipulations, the parties  
10 agree that the Board, without further notice or formal proceeding, issue and enter the following  
11 Disciplinary Order:

12 DISCIPLINARY ORDER

13 IT IS HEREBY ORDERED that Occupational Therapist License No. OT 4089  
14 issued to Respondent Ernesto Gabriel Martinez, Jr. is revoked. However, the revocation is  
15 stayed and Respondent is placed on probation for three (3) years on the following terms and  
16 conditions.

17 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws  
18 and regulations governing the practice of occupational therapy in California. Respondent shall  
19 submit, in writing, a full detailed account of any and all violations of the law to the Board within  
20 five (5) days of occurrence.

21 2. **Compliance with Probation and Quarterly Reporting.** Respondent  
22 shall fully comply with the terms and conditions of probation established by the Board and shall  
23 cooperate with representatives of the Board in its monitoring and investigation of the  
24 respondent's compliance with probation. Respondent, within ten (10) days of completion of the  
25 quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance  
26 form obtained from the Board.

27 3. **Personal Appearances.** Upon reasonable notice by the Board,  
28 Respondent shall report to and make personal appearances at times and locations as the Board

1 may direct.

2                   4.       **Notification of Address and Telephone Number Change(s).**

3 Respondent shall notify the Board, in writing, within five (5) days of a change of residence or  
4 mailing address, of his new address and any change in work and/or home telephone numbers.

5                   5.       **Tolling for Out-of-State Practice, Residence or In-State Non-Practice.**

6 In the event Respondent should leave California to reside or to practice outside the State for more  
7 than thirty (30) days, or cease to practice within California (see condition 7 below), Respondent  
8 shall notify the Board, or its designee, in writing within ten (10) days of this fact, and provide the  
9 dates of departure and return. All provisions of probation other than the quarterly report  
10 requirements, examination requirements, and education requirements, shall be held in abeyance  
11 until Respondent resumes practice in California. All provisions of probation shall recommence  
12 on the effective date of resumption of practice in California.

13                   6.       **Notification to Employer(s).** When currently employed or applying for  
14 employment in any capacity in any health care profession, Respondent shall notify his employer  
15 of the probationary status of respondent's license. This notification to the current employer shall  
16 occur no later than the effective date of the Decision. Respondent shall notify any prospective  
17 health care employer of his probationary status with the Board prior to accepting such  
18 employment.

19                   Respondent shall cause each health care employer to submit quarterly reports to  
20 the Board. The reports shall be on a form provided by the Board, shall include a performance  
21 evaluation and such other information as may be required by the Board.

22                   Respondent shall notify the Board, in writing, within five (5) days of any change  
23 in employment status. Respondent shall notify the Board, in writing, within five (5) days if he is  
24 terminated from any occupational therapy or health care related employment with a full  
25 explanation of the circumstances surrounding the termination.

26                   7.       **Employment Requirements and Limitations.** During probation,  
27 Respondent shall work in his licensed capacity in the State of California. This practice shall  
28 consist of no less than (6) continuous months and of no less than twenty (20) hours per week.

1 Respondent must practice a total of not less than eighteen (18) months during the probationary  
2 period.

3 While on probation, Respondent shall not work for a registry, home health agency  
4 or in any private duty position, except as approved, in writing, by the Board. Respondent shall  
5 work only on a regularly assigned, identified, and pre-determined work site(s) and shall not work  
6 in a float capacity except as approved, in writing, by the Board.

7 8. **Supervision Requirements.** Respondent shall obtain prior approval from  
8 the Board, before commencing any employment, regarding the level of supervision provided to  
9 the respondent while employed as an occupational therapist or occupational therapy assistant.

10 Respondent shall not function as a supervisor during the period of probation  
11 except as approved, in writing, by the Board.

12 9. **Continuing Education Requirements.** Respondent shall complete  
13 continuing education directly relevant to the violation as specified by the Board. Continuing  
14 education shall be completed within a period of time designated by the Board, which time frame  
15 shall be incorporated as a condition of this probation.

16 Respondent shall complete a minimum of 24 hours of continuing education with  
17 at least eight (8) each in Ethics, Documentation and Stress Management.

18 Continuing education shall be in addition to the professional development  
19 activities required for license renewal. Within thirty (30) days of the Board's written  
20 notification of the assigned coursework, respondent shall submit a written plan to comply with  
21 this requirement. The Board shall approve such plan prior to enrollment in any course of study.

22 Failure to satisfactorily complete the required continuing education, within 12  
23 months of the effective date of this Stipulated Settlement, shall constitute a violation of  
24 probation. Respondent is responsible for all costs of such continuing education. Upon  
25 successful completion of the course(s), Respondent shall cause the instructor to furnish proof to  
26 the Board within thirty (30) days of course completion.

27 10. **Maintenance of Valid License.** Respondent shall, at all times while on  
28 probation, maintain an active current license with the Board, including any period during which

1 license is suspended or probation is tolled.

2           11.     **Cost Recovery Requirements.** Respondent shall reimburse the Board,  
3 pursuant to Business and Professions Code section 125.3, for its costs in the investigation and  
4 enforcement of this matter totaling \$9,500.00. Failure to make payments in accordance with any  
5 formal agreement entered into with the Board or pursuant to any Decision by the Board shall be  
6 considered a violation of probation.

7           Respondent shall enter into a formal agreement with the Board to reimburse the  
8 unpaid costs within three (3) years from the effective date of the Stipulated Settlement.  
9 Respondent may make payments on either a monthly or quarterly basis.

10           Except as provided above, the Board shall not renew or reinstate Respondent's  
11 license if he fails to pay all the costs as directed in this Stipulated Settlement.

12           12.     **Violation of Probation.** If respondent violates probation in any respect,  
13 the Board, after giving respondent notice and opportunity to be heard, may revoke probation and  
14 carry out the disciplinary order which was stayed. If an accusation or a petition to revoke  
15 probation is filed against respondent during probation, the Board shall have continuing  
16 jurisdiction until the matter is final, and the period of probation shall be extended until the matter  
17 is final.

18           13.     **Completion of Probation.** Upon successful completion of probation,  
19 Respondent's license will be fully restored.

20           14.     **Petition for Reinstatement of License or Modification of Penalty.**  
21 Respondent is not eligible to apply for early termination of probation or modification of any  
22 penalty herein.

23           15.     **Psychotherapy.** Within thirty (30) days of the effective date of the  
24 Decision, Respondent shall submit to the Board the name of one (1) or more proposed therapists  
25 for prior approval. Respondent shall participate in ongoing psychotherapy with a California  
26 licensed or legally registered mental health professional approved by the Board. Upon approval  
27 by the Board, Respondent shall commence psychotherapy. If Respondent is currently attending  
28 therapy sessions with a licensed or legally registered mental health professional, Respondent may

1 provide his/her name to the Board for approval. Respondent shall provide the therapist with a  
2 copy of the Board's Disciplinary Order no later than the first counseling session. Counseling  
3 shall be at least once a month for one (1) year from the effective date of the this Stipulated  
4 Settlement, unless otherwise determined by the Board. Respondent shall continue in such  
5 therapy at the Board's discretion. Cost of such therapy shall be paid by respondent.


6 Respondent shall cause the therapist to submit to the Board a written report  
7 concerning Respondent's psychotherapy status, and to provide such other information as may be  
8 required by the Board. The initial status report shall be submitted within ninety (90) days from  
9 the effective date of the Stipulated Settlement. Respondent shall cause the therapist to submit  
10 quarterly written reports to the Board concerning Respondent's fitness to practice and to provide  
11 such other information as may be required by the Board.

12 If the therapist finds that the Respondent is not fit to practice safely, or can only  
13 practice with restrictions, the therapist shall notify the Board, in writing, within five (5) working  
14 days. The Board shall notify respondent to cease or restrict licensed activities as a condition of  
15 probation. Respondent shall comply with this condition until the Board is satisfied of  
16 Respondent's fitness to practice safely and has so notified respondent. Respondent shall  
17 document compliance with this condition in the manner required by the Board.

#### 18 ACCEPTANCE

19 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
20 have fully discussed it with my attorney, Lawrence Trygstad. I understand the stipulation and the  
21 effect it will have on my Occupational Therapist License. I enter into this Stipulated Settlement  
22 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
23 Decision and Order of the Board.

24 DATED: 11/21/2007

25   
26 ERNESTO GABRIEL MARTINEZ, JR.  
27 Respondent  
28 //

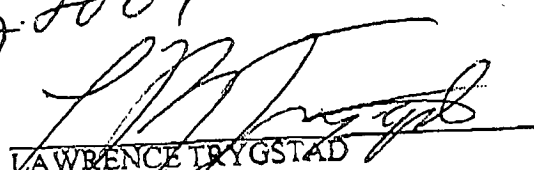
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ATTY GENERAL OFFICE

2156575320

1 I have read and fully discussed with Respondent Ernesto Gabriel Martinez, Jr. the  
2 terms and conditions and other matters contained in the above Stipulated Settlement and  
3 Disciplinary Order. I approve its form and content.

4  
5 DATED: November 27, 2007

6  
7   
8 LAWRENCE TRYGSTAD  
9 Attorney for Respondent


10 ENDORSEMENT

11 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
12 submitted for consideration by the Board of Occupational Therapy, Department of Consumer  
13 Affairs.

14  
15 DATED: NOVEMBER 27, 2007

16 EDMUND G. BROWN JR., Attorney General  
17 of the State of California

18 GLORIA A. BARRIOS  
19 Deputy Attorney General

20   
21 KEVIN W. BUSH  
22 Deputy Attorney General

23 Attorneys for Complainant

24 DOJ Matter ID: LA2006601022  
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